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movement toward appropriate reliance upon competitive markets to provide safe, reliable, and reasonably-priced electric services. Specifically, the CES stated that the Commission has before it, in the instant consolidated dockets, an opportunity to bring competitive opportunities to customers in the service territories of AmerenCIPS, AmerenCILCO, and AmerenIP (collectively referred to as “Ameren” or “the Companies”) comparable to those that exist in the ComEd service territory. Indeed, the CES averred that these competitive opportunities in ComEd’s service territory will likely increase as a result of ComEd’s revised procurement proposal, as presented in ICC Docket No. 05-0159.

In the instant consolidated proceedings, the CES contended that Ameren has been less forthright than ComEd in its respective procurement docket. Consequently, the CES averred that these competitive opportunities can be achieved only by the Commission’s directive to Ameren to halt its long-running practice of obstructing and delaying the development of competitive markets, and ordering Ameren to take perfectly reasonable steps to foster competition.

The record amassed in the instant consolidated dockets is no less compelling than the one developed in the parallel ComEd Docket, which spurred ComEd to propose a revised procurement proposal that is, in almost all respects, consistent with the two key standards that the Coalition set forth at the outset of this proceeding: Customer Focus and Market Reliance. The CES contended that, Ameren refused to revise, let alone contemplate revisions to, its procurement proposal to include an improved design of auction products based not on administrative fiat but on retail customers’ experiences during the mandatory transition period.

The CES averred that Ameren’s current proposal, little changed from its original form, despite the collapse of its own arguments in important respects, remained inconsistent with ComEd’s revised procurement proposal. The CES averred that ComEd’s procurement proposal,

as it presently stands, comported with applicable law and the Coalition’s policy standards. Ameren’s proposal falls short, according to the CES, in several important respects, and should be revised by the Commission. For example:

- Ameren improperly persists in including customers between 400 kW and 1 MW of demand in the blended, multi-year auction product group. Ameren has not revised this portion of its proposal, even though the Coalition empirically demonstrated that switching behavior in this group of medium-sized commercial customers is more similar to that of business customers above 1 MW than to that of residential and small business customers with whom the 400 kW – 1 MW group would be included by Ameren. Additionally, the CES pointed out that modification of Ameren’s proposal, as recommended by the Coalition, would better align Ameren’s customer groupings with ComEd’s for the contemporaneous statewide auction.
- After refusing to combine the 400 kW – 1 MW customers with their kindred group of greater than 1 MW customers, Ameren compounded the error by rejecting any migration risk premium adjustment. This action, according to the CES, virtually ensured that residential customers would pay higher rates. The CES stated that ComEd included a similar adjustment prior to its decision to place the 400 kW – 1 MW customers with those between 1 MW and 3 MW of demand. The obvious and unavoidable result of Ameren’s approach, according to the CES, was to shift the cost of migration risk to residential customers. The CES pointed out that the Commission could easily avoid this problem, either by including a migration risk premium allocation factor or by applying the single-year auction product to all customers over 400 kW. According to the CES, the latter option was preferable to the former.
- Ameren insisted on its proposed 30-day enrollment window. The CES stated that Ameren advocated this position in spite of (1) the obvious problems it presented for customers considering alternative supply; (2) ComEd’s willingness to provide for a 50-day enrollment period in the initial auction; and (3) the empirical evidence that demonstrated that the longer 75-day ComEd enrollment window better facilitated the development of a competitive retail electric market.
- Ameren also advocated for the assessment of a non-cost-based fee to customers who purchase supply from RESs. Under its proposed Rider D, Ameren seeks to assess customers who choose alternative supply from a RES a charge for an hourly supply service that those customers may not want and may never use. Ameren mischaracterized this “non-bypassable” Rider-D fee as “insurance” when it bears no resemblance, theoretically or legally, to insurance. The Coalition explained that the Rider-D fee is “unduly discriminatory, unreasonable, and unjust.” The CES concluded that, unfortunately, such a proposal now is all too typical of Ameren.

In short, the Coalition respectfully requested that the Commission direct Ameren to revise its proposal so as to adopt the basic form and substance of ComEd's revised procurement proposal in Docket No. 05-0159. Specifically the Coalition asked the Commission to require Ameren to: include, as proposed by the CES, its revised customer groupings, the revised enrollment window for the BGS-LFP auction product, and the elimination of the non-bypassable Rider-D fee to competitive choice customers.

Additionally, although the ultimate resolution of several issues raised by the Coalition in this docket will occur in Ameren's yet-to-be-filed general rate case, the CES contended that the Commission should utilize the instant proceeding to provide proper direction and guidance to Ameren and other Illinois market participants. In the instant proceeding, the Commission should ensure that:

- the Supply Procurement Adjustment ("SPA") is properly designed with an emphasis on cost recovery through a per kWh volumetric charge so as to more accurately relate prices to cost on a customer class basis;
- new customers to the Ameren system are fully eligible to elect delivery services on the first day of service rather than having to take bundled service for the initial month;
- uncollectible amounts related to delivery services customers and bundled services customers by class will be accounted for separately;
- a proper recognition of an increased uncollectible expenses rate resulting from real-time BGS-RTP customers being exposed to wide variability in hourly prices is incorporated into Ameren's proposed real-time BGS-RTP products; and
- a proper recognition and treatment of all direct and indirect costs and related capital expenditures associated with serving BGS-RTP customers is incorporated into Ameren's proposed BGS-RTP products.

By providing guidance on these significant issues, the Commission can assist in realizing an important goal: bringing additional certainty to the Illinois retail electric market.

II. NEED FOR COMMISSION ACTION

CES' Position

According to the CES, as a matter of law and sound public policy, the Commission must approve a market-based post-transition procurement methodology for Ameren. The CES averred that the General Assembly appropriately directed the Commission to oversee the development and implementation of the competitive procurement process in Illinois. In the Electric Service Customer Choice and Rate Relief Law of 1997 (the “Choice Law”), the General Assembly established a “mandatory transition period,” during which electric utilities’ bundled rates were subject to a rate freeze, even though the utilities were able to divest themselves of their generation assets. (*See* 220 ILCS 5/16-104, 16-111(g).) The Choice Law also authorized the Commission, at any time and upon its own motion or otherwise, to “investigate the need for, and to require, the restructuring or unbundling of prices for tariffed services, other than delivery services, offered by an electric utility.” (220 ILCS 5/16-109A.) Thus, according to CES, following the mandatory transition period, the bundled rates of electric utilities may be both “unbundled” and reset. (*See* 220 ILCS 5/16-109A, 111(i).)

The CES also surmised that the General Assembly mandated that the post-transition unbundled rates be set using “the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tariffed services . . .” (220 ILCS 5/16-111(i).) That is, the Commission was required, according to the CES, to investigate the actual or projected costs the utilities incur in the market to procure generation, and base the utilities’ bundled rates upon those costs rather than upon the utilities’ historic costs.

According to the CES, if the Commission were to ignore the General Assembly’s directives, it likely would result in the Commission having less control over Ameren’s wholesale

electricity procurement process, potentially yielding significant authority to the Federal Energy Regulatory Commission (“FERC”).

As recognized by the CES, Ameren’s auction proposal includes Commission pre-approval and oversight of the process and final Commission approval before the wholesale prices resulting from the auction are translated into retail rates. (See Ameren Ex. 2.0 at lines 672-707.) Without a state-approved acquisition methodology, utilities likely would enter into FERC-approved bilateral wholesale contracts (with their affiliates or otherwise). Under the Federal Power Act, wholesale contract transactions generally are considered to be subject to FERC’s regulatory authority. (See *New York v. FERC*, 535 U.S. 1, 18-19, 122 S. Ct. 1012, 1023 (2002) (“the FPA gives FERC jurisdiction over the transmission of electric energy in interstate commerce and . . . the sale of such energy at wholesale”) (quoting 16 U.S.C. § 824(b)). See also *Mississippi Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354, 371, 108 S. Ct. 2428, 2438-39 (1988).)

Commission Analysis and Conclusion

Ameren’s proposed procurement process appropriately provides assurance to the Commission that it will maintain oversight of the Companies’ procurement process. As will be discussed in greater detail below, the Commission’s involvement further ensures that the resulting wholesale rates that are produced through the auction process are just and reasonable.

Thus, Ameren’s competitive procurement proposal appropriately incorporates the competitive goals of the General Assembly and provides for Commission pre-approval, oversight and evaluation of the wholesale prices that emanate from the auction prior to the resulting “market values” becoming the costs that Illinois customers bear. Accordingly, we conclude that Commission action is both necessary and appropriate at this time.

III. LEGAL ISSUES

A. Background: The Illinois Electric Service Customer Choice and Rate Relief Law of 1997

CES' Position

Enactment of the Electric Service Customer Choice and Rate Relief Law of 1997 (the “Choice Law”) in 1997 signaled the beginning of a complex, multi-faceted transformation of the electric industry in Illinois. The scope of this ongoing transformation has affected all stakeholders, including consumers, utilities, alternative retail electric suppliers, governmental agencies, and other interested parties.

The Choice Law has proven to be flexible and durable. Credit is due to the General Assembly for producing a measure to which many parties were able to contribute and support. The General Assembly charged the Commission with three directives regarding competitive development: (1) to promote competition; (2) to set market-based rates; and (3) to declare rates “competitive.”

The CES averred that, through the Choice Law, the General Assembly provided a clear policy directive to the Commission: “The Illinois Commerce Commission should act to promote the development of an effectively competitive market that operates efficiently and is equitable to all consumers.” (220 ILCS 5/16-101(d) (emphasis added).) Thus, according to CES, the General Assembly endorsed the concept that the Commission, in establishing just and reasonable rates, must take affirmative action to ensure the development of an effectively competitive market for retail electricity in Illinois.

According to the CES, the Choice Law provides that, in the event that utilities do not own generation and must acquire supply in the wholesale market, the price of the wholesale supply should have a reasonable relationship to the costs indicated by the Commission-approved market

value energy charge (“MVEC”) methodology. (*See* 220 ILCS 5/16-111(i). *See also* CES Ex. 1.0 at lines 110-22.) The CES further averred that the Choice Law provides that the MVEC methodology can rely on a variety of inputs, including contracts applicable to the utility’s service areas. (*See* 220 ILCS 5/16-112(a).) According to the CES, the auction proposed by Ameren would yield such energy contracts. (*See* CES Ex. 1.0 at lines 119-22.)

As CES witness Dr. O’Connor explained, a properly designed auction should produce wholesale energy prices that reflect market conditions at the time the auction is conducted and should also help to keep the costs of the utility’s operation of the delivery network free of commodity-related risk and cost. (*See* CES Ex. 1.0 at lines 110-13.) The auction method also should improve the calculation of the MVEC component of the Power Purchase Option (“PPO”) rates that Ameren must continue to offer after the transition period. (*See id.* at lines 113-19.)

Commission Analysis and Conclusion

The Choice Law envisions the development of a competitive market for electricity in Illinois, in which each consumer will have choices to determine the most advantageous way to obtain electricity to service that customer’s own needs. (*See* 220 ILCS 5/16-101A(b), (d), (e).) The instant proceeding represents a critical step toward achieving the General Assembly’s goals.

The Choice Law reflects the General Assembly’s belief that Illinois retail electric customers will benefit from competition because competition will lower rates more effectively than regulation. (*See* ILCS 5/16-101(e)). The goal of restructuring the electric industry is to introduce competition to a formerly noncompetitive, monopolistic market so that consumers may experience the benefits of competition. Only the Commission’s continued efforts to foster a competition-enabling environment will provide consumers with meaningful choices and

reasonable opportunities to achieve savings from rates derived through a traditional rate of return regulatory process.

D. References to Post-2006 Initiative Reports and Results

CES' Position

The CES members participated in the Commission's Post-2006 Initiative's Procurement Working Group, and the framework for the CES' views is informed by the members generally subscribing to the efficacy of an auction procurement method. (*See* CES Ex. 1.0 at lines 61-70.) The results of these workshop discussions indicated that the auction approach, in general, possessed the fullest complement of the desirable procurement characteristics that were identified by the Initiative participants. (*See* CES Ex. 1.0 at lines 58-61.) That is, none of the other procurement models analyzed by the Procurement Working Group possessed as many of the eighteen desirable attributes as the type of general auction approach proposed in this proceeding. (*See* CES Ex. 1.0 at lines 64-66.)

Commission Analysis and Conclusion

The topic of the post-transition procurement method was discussed extensively during the Commission's Post-2006 Initiative (the "Initiative") workshops that were held throughout 2004. The Commission is sympathetic to arguments and warnings to protect the workshop process and the disclosure of specific positions or statements made in workshops. Moreover, the Commission is sympathetic to the calls for the exclusion of other inappropriate disclosures from the records of the instant proceeding as well as other Commission proceedings. Consistent with prior rulings in the instant consolidated proceedings, however, and in reaching our decision in this matter, all testimony has been given the weight it merits. That is to say, the Commission has given neither more nor less weight to the Post-2006 references in the record than those materials

deserve. The Commission's decision must be based on the record, and any purported consensus that has been contested has been considered and reviewed by the Commission. Accordingly, the Commission notes that its own body, its staff, and the numerous participating stakeholders invested a great deal of time and resources into the working group process, which efforts were rewarded when the parties reached consensus on many items and helped establish a framework for the Commission to utilize in addressing post-2006 issues. On the other hand, however, the Commission has before it in the instant proceedings an extensive record consisting of far more than the post-2006 working group reports and, in making its determination in these consolidated proceedings regarding the proposed tariffs, the Commission has considered the entire record.

IV. SUFFICIENCY OF THE COMPETITIVE MARKET

C. Retail Market Conditions

CES' Position

According to the CES, although the end of the mandatory transition period remains more than a year away, the commercial and industrial competitive market in Northern Illinois (*i.e.*, ComEd's service territory) has developed well. (*See* CES Ex. 1.0 at lines 724-42.) The CES contended, however, that a competitive market in the Ameren service territories has been slow to develop.

The CES averred that unrebutted evidence demonstrated that, by year-end 2004, competitive conditions since the inception of the Choice Law in Illinois had yielded roughly \$1 billion in savings for Illinois' non-residential consumers. (*See* ComEd Ex. 1.0 at lines 120-23; CES Ex. 1.0 at lines 804-57.) The CES submitted evidence that residential customers have benefited significantly from rate reductions that, while statutorily mandated, were predicated on the well-founded belief that competitive wholesale market conditions were such that justified the

prescription of savings relative to embedded costs of generation. (*See* CES Ex. 1.0 at lines 804-57.) According to the CES, commercial, industrial, non-profit, institutional, and governmental customers have benefited from the introduction of competition, by being able to directly participate in the retail electric market, either by contracting with a RES or taking service under the PPO.

According to the CES, the Commission has played an integral role in the development of the Illinois retail electric market. Indeed, Coalition witness Dr. O'Connor explained that the Commission's positive and reasonably proactive posture in administering has been the Choice Law has been "[t]he most important feature of the Illinois regulatory environment." (CES Ex. 1.0. at lines 895-97.) The CES pointed out that the Choice Law provided considerable flexibility to the Commission to adapt its regulations to market conditions, and the Commission appropriately has exercised its authority to foster competitive market development. In addition, the CES stated that the Commission generally has chosen a progressive path in decisions regarding competitive market implementation. (*See* CES Ex. 1.0 at lines 692-95.)

The CES requested that the Commission continue to vigilantly address utility practices that appear to inhibit customer choice and increase unnecessary transaction costs. The CES commended the Commission's leadership as a steadying force in the evolution of the competitive market in Illinois. (*See* CES Ex. 1.0 at lines 711-12.) According to the CES, as a general rule, the Commission's decisions during the transition period have helped to cultivate an atmosphere that enabled market participants, utilities, and competitive suppliers to increasingly focus attention and effort on improving commercial conditions and conducting business, rather than expending resources on contentious regulatory proceedings with uncertain outcomes. (*See* CES Ex. 1.0 at lines 697-702.) For example, the CES noted the Commission's appropriate ratification

of the “Global Settlement” that ComEd, consumer groups, businesses, and RESs negotiated in early 2003. (*See* CES Ex. 1.0 at lines 702-09.) By doing so, the CES stated that the Commission created the necessary conditions for business customers to enter into multi-year retail contracts in Northern Illinois. These multi-year retail contracts, according to the CES, enabled business customers, for the first time, to hedge their supply and CTCs for the duration of the transition period, thereby ensuring budgetary certainty. (*See* CES Ex. 1.0 at lines 705-09.)

The CES averred that the lack of competitive development in the Ameren service territories was neither merely a chance result nor the simple effect of low bundled rates in those service areas. (*See* CES Ex. 1.0 at lines 395-403.) Rather, according to the CES, much of the differences between competitive developments in the ComEd service territory versus development in the territories of Ameren derived from explicit utility policies and practices. (*See* CES Ex. 1.0 at lines 397-99.) The CES cited several reasons to explain the lack of competitive development in the Ameren service territories, including:

- Retail tariff terms and conditions and business practices that have acted to impede the development of customer choice, such as:
 - The inability of a RES to obtain all PPO pricing data elements, including transmission and ancillary services and the daily load profiles used in the AmerenIP service territory (since they change daily), makes modeling of the MVI extremely difficult for RESs.
 - Lack of timely response to RESs and/or customers in providing the PPO calculations which determines their CTC and PPO eligibility;
 - A very short window to shop, especially with regard to the multi-year transition charges in AmerenIP;
 - Transition Charge and PPO information was not available on AmerenIP’s website for all customers; and
 - Lack of uniformity in switching processes and business practices related to obtaining the customer data necessary to serve retail load;

- Transmission reservation policies and practices that have impeded the development of customer choice; and
- Extremely onerous energy imbalance provisions.

(See CES Ex. 1.0 at lines 377-93.)

Although Ameren has made some progress recently to address some of these issues, the CES stated that the lack of competition in the Ameren service territories, combined with the reasonable recommendations herein, provided a compelling case for the Commission to impose conditions upon its approval of Ameren's proposal in the instant proceeding. (See CES Ex. 1.0 at lines 399-403.) By doing so, the CES averred that the Commission would very likely put an end to Ameren's anti-competitive policies and business practices, and thereby provide customers in Ameren's service territories with competitive choices. (See CES Ex. 1.0 at lines 365-68.)

As guiding principles for the development of competition in the Ameren service territories, the CES cited four (4) empirical measures that demonstrate the substantial market development in the ComEd service territory.

The first empirical measure noted by the CES is the total portion of load that has moved from bundled service to delivery service. The CES stated that the amount and portion of load switched to delivery services can be analyzed according to various categories, such as PPO load or load served by RESs. (See CES Ex. 1.0 at lines 735-55.) In the ComEd service area at year-end 2004, over 21,000 business customers had switched, accounting for almost 52% of all usage by business customers above 15,000 kWh per year. (See CES Ex. 1.4.)

Almost one-third of all switched load is served through the PPO statewide. (See CES Ex. 1.5.) According to the CES, the substantial role of the PPO should not cloud the recognition that customers have demonstrated an appetite for making arrangements other than for service

under the traditional bundled tariffed rate. The CES averred that choosing to take PPO service is indeed a choice to move from traditional bundled service to a contract-based, market priced product. (*See* CES Ex. 1.0 at lines 766-68.) The CES further pointed to Ameren's own witness Nelson's acknowledgment that the movement of customers to the PPO is evidence that the Choice Act is working. (*See* Nelson Tr. at 140)

The second empirical measure of market development cited by the CES is the range of business customers demonstrating an appetite for competitive sourcing and contracting for alternative supply. The competitive market has impacted a broad range of customers. The CES surmised that customers over 1 MW have been especially prepared to consider their energy purchase as a matter separate from delivery matters. However, the CES averred that this willingness extended to business customers under 1 MW of demand as well. (*See* CES Exhibit 1.4.)

The CES cited switching statistics reported by the Commission in its most recent Annual Report to the General Assembly on the Status of Competition in 2004 that show that, at the end of last year, on an aggregate basis, over three-fifths, 63.3%, of the usage by customers in the ComEd service area with demands in excess of 1 MW was served through delivery services. (*See* CES Ex. 1.0 at lines 777-84.) The combined figure for ComEd and Ameren is 56.6%. (*See* CES Ex. 1.4.)

The CES also presented evidence that the percentage of usage by customers with under 1 MW of demand that switched to alternative supplies through delivery services was significantly greater than the percentage of the number of such business customers switching. The CES members expected such a result, given their experiences with the restructuring of other network industries because, as the CES pointed out, competition does not displace a monopoly all at once.

(See CES Ex. 1.0 at lines 797-99.) Dr. O'Connor explained that, on average, larger customers tend to move toward choice sooner than smaller customers in competitive transitions. (See CES Ex. 1.0 at lines 798-99.) The CES pointed out the likelihood that, with the demise of CTCs, especially class-based CTCs for customers below 400 kW, smaller customers would exhibit a growing appetite for choice. (See CES Ex. 1.0 at lines 799-802.)

The third empirical measure of market development presented by the CES is the dollar savings that customers have realized through competitive supply sourcing as compared to price levels in place under frozen rates. According to the CES, the newly developed market has borne considerable savings for customers. As Dr. O'Connor explained, calculating the realized savings compared to frozen bundled rates necessarily involved some estimation. (See CES Ex. 1.0 at lines 806-13.) However, the CES contended that the data available from the Commission and on the legislated mitigation factors provided a sound foundation for the estimate. (See CES Ex. 1.0 at lines 807-08.) Dr. O'Connor concluded that a reasonable estimate based on available data suggests a realized savings of about \$1 billion for business customers in the ComEd and Ameren service territories from the commencement of open access in October 1999 to the end of 2004 and in the succeeding several months. (See CES Ex. 1.0 at lines 804-12.) According to the CES, that averaged to a market-wide savings for non-residential customers of about \$15 million per month of open access.

The fourth empirical measure of market success relied upon by the CES is the participation in the market by RESs competing against each other. (See CES Ex. 1.0 at lines 741-42.) As of May 31, 2005, the Commission website identified a total of sixteen (16) RESs eligible to serve non-residential customers above 15,000 kWh per year, three of which are certificated solely for the ComEd service territory. (See Illinois Commerce Commission List of

Certified Electric Suppliers – ARES, *available at* <http://www.icc.illinois.gov/ec/electricity.aspx>

Although the CES conceded that a number of RESs would appear to have little or no sales activity, those RESs that have been actively engaged in the Illinois market have built considerable customer support and, on a continuing basis, seek out additional customers. (*See* CES Ex. 1.0 at lines 861-64.) The CES also cited the reports made public each summer by the Mid-America Interconnected Network (“MAIN”) as a good indicator of the activity in the market. The CES pointed out that information extracted and summarized from the MAIN reports for 2001, 2002, 2003 and 2004 showed a significant distribution of load responsibilities for the various RES and ARES over time. (*See* CES Exhibit 1.7.) Competitive activity among RESs for customer load, according to the CES, was therefore evident. In the ComEd area, from the summer of 2001 through summer 2004, estimated demand increased for all but one of the eight individual RESs shown as load serving entities (“LSE”) scheduling deliveries into ComEd.

In addition, the CES argued that at least two (2) members of the CES are major providers of electric service to residential and small commercial customers in other jurisdictions and currently provide natural gas service to residential and small commercial customers in Illinois.

In conclusion, the CES requested that the Commission take care to preserve choice for commercial and industrial customers while transitioning to a post-2006 procurement process so that all Illinois consumers can directly receive the benefits of competition.

Commission Analysis and Conclusion

The Commission concludes that the record evidence overwhelmingly demonstrates that many aspects of the Illinois retail electric market are working very well and already are

delivering benefits to consumers in Northern Illinois. The Commission will utilize this evidence as it considers the issues before us in the instant proceeding.

V. AUCTION DESIGN ISSUES

F. Date of Initial Auction

Ameren's Position

Ameren initially proposed to hold its first auction in May 2006 for initial power delivery in January, 2007. As rationale, Ameren stated that its objective was to hold the auction at a time that would attract the maximum number of potential suppliers and, therefore, the lowest price for their customers. When deciding on the May 2006 auction date, Ameren stated that the Companies considered many factors including: (a) its desire to avoid the more volatile summer and winter months; (b) proximity of the auction date to the delivery period; and (c) input from suppliers.

CES' Position

Other parties recommended May 2006 as the initial auction date. In support of a May 2006 date, the CES reasoned that an auction scheduled for May 2006 could be delayed, if necessary, until September 2006 to allow time for the Auction Manager to address problems that may arise. (*See* CES Exhibit 1.0 at lines 229-33; CES Exhibit 2.0 at line 56) The CES also stated that an earlier auction date would allow customers under 1 MW additional time to evaluate their supply options. (CES Exhibit 1.0 at lines 219-21) As CES witness Dr. O'Connor explained, conducting the auction prior to September would increase "flexibility and options for the Commission, for regulators and policymakers and, most importantly, for customers." (CES Ex. 1.0 at lines 213-15.) Accordingly, the CES originally argued that an initial auction date in May would be appropriate.

CCG's Position

Michael D. Smith, testifying on behalf of Constellation Energy Commodities Group (“CCG”), a potential bidder in the auction, stated that May 2006 would allow sufficient time for winning bidders to hedge their positions prior to the delivery date of January 2007. (CCG Exhibit 1.0, pp. 4-5, lines 119-133.)

Staff's Position

Staff originally recommended July 2006 as the date for the initial auction. As rationale, Staff argued that, since the 2006 auctions would be the first of their kind in Illinois, prudence dictated that an adequate amount of preparation could occur before the auction takes place. When compared to May 2006, Staff noted that a July 2006 date would provide two additional months of preparation time. As a point of comparison, Staff witness Schlaf pointed out that the first two New Jersey auctions were held nearly six months prior to the delivery dates for those auctions. Only later, as more auction experience was gained, did the gap between auction date and delivery date narrow to less than four months. (ICC Staff Exhibit 5.0, pp. 21-22, lines 497-499.)

Ameren's Response

In rebuttal testimony, Ameren witness Nelson stated that Ameren and ComEd had agreed to hold the first joint auctions during the first ten days of September 2006 as the timeframe for the initial auction. (Ameren Ex. 10.0, lines 326-327) Mr. Nelson stated that, upon further contemplation of the benefits and drawbacks of the May and September auctions, Ameren had determined that an early September 2006 auction date was a reasonable balancing of interests. (*Id.* at lines 335-37.)

The Parties' Response to the ComEd/Ameren Agreement

CCG witness Smith was the only prospective bidder to respond to the September 2006 proposal. While still preferring the May 2006 date, he stated that CCG would not object to simultaneous September auctions and that the September date would not affect CCG's desire to participate in the auctions. (CCG Exhibit. 2.0, at lines 35-43.) Staff emphasized the need for a joint auction that would procure supply for the customers of ComEd and Ameren at one time. (Staff Ex. 1.0 at lines 856-62.) A joint auction, which was also favored by ComEd and Ameren, required that a common date be selected. The Staff supported this agreement and concurred with the decision to conduct the first auctions at that time. (Staff Ex. 11.0 at lines 274-84.)

The CES was not persuaded by the "technical" reasons presented to justify a delayed initial auction date. When pressed, Ameren admitted that there is no technical reason to wait until September. (*See* Nelson Tr. At 142.) Indeed, Ameren's own analysis suggested that a May 2006 auction date was workable. (*See* Ameren Ex. 10.0 at lines 302-10; Nelson Tr. at 142.)

Thus, the CES concluded that, assuming that the Commission entered a Final Order in the instant docket in or about January 2006, scheduling the initial auction for May or July would afford the Auction Manager sufficient time to set up the process, to advertise to potential suppliers, and to provide training to suppliers.

The Coalition also presented empirical research and data that debunked Ameren's assertion that increased supply shortages in July versus September would be more likely to result in increased July price volatility. (*See* Nelson T. at 147. *But see* CES Ex. 5.0 at lines 281-329.) The Coalition's unrebutted research revealed that wholesale power prices are not more volatile in July than in September. The CES data also demonstrated that a May 2006 initial auction, as

proposed by the Coalition, would be subject to the lowest price volatility and lowest risk. (See CES Ex. 5.0 (Revised) at lines 288-303.)

The CES data demonstrated that the difference in volatility between the July forward contracts and the September forward contracts was less than one-tenth of one percent (0.0008) or 4 cents per MWh. The price data for 2004 indicated that July volatility (1.4%) was the lowest for a next-year (Cal 2005) forward price. The average (Cal 2005 - Cal 2007) July volatility (2.0%) was slightly higher (0.2%) than September volatility (1.8%). Similar data showed that May price volatility (1.6%) was lower overall than July (2.0%) and September (1.8%). Furthermore, the price data for 2005 showed that the May average price volatility (0.9%) was lower than the July average price volatility (1.4%). Obviously, prices have risen over time for a variety of reasons, but the volatility of these longer-term forward contracts has remained fairly constant. (See CES Ex. 5.0 at lines 291-303.)

The Coalition therefore explained that the decision to choose September as the initial auction date should not be based on some unfounded assertion regarding “price accuracy” because, as the Coalition’s research demonstrated, that notion did not always hold true. The initial auction should be conducted in May or July 2006.

Since no party presented any evidence in response to this data and given the tangible benefits associated with an earlier auction date, the CES recommended that the Commission direct ComEd to conduct the initial auction in May or July 2006.

Dr. O’Connor explained that customers should be the main focus of this proceeding; and Illinois public policy treats the opportunity to exercise choice as a key element in benefiting customers. (See CES Ex. 1.0 at lines 217-24.) That being the case, the CES averred that a May or July 2006 date for the initial auction would provide additional time for customers -- particularly those below 1 MW of demand -- to assess their options prior to the end of the

mandatory transition period on January 1, 2007. According to the CES, a May or July 2006 auction date would be consistent with promoting opportunities for customer choice.

The CES also contended that holding the initial auction prior to September 2006 would provide auction participants, the Commission, and the Auction Manager the benefit of additional time to make corrections or adjustments in the event of problems that impact either or both the ComEd and the Ameren auctions. (*See* CES Ex. 1.0 at lines 216-25; CES Ex. 2.0 at lines 77-95.) Although the auction approach that is proposed in this proceeding has been vetted in New Jersey and, therefore, within the PJM Interconnection, LLC (“PJM”), Dr. O’Connor explained that the application of this approach to a new region within PJM could involve any number of risks that may not have been anticipated. (*See* CES Ex. 1.0 at lines 216-23.)

Furthermore, as explained by CES witnesses Bollinger and Bohorquez, the success of initial auctions in Illinois may be affected by the membership of ComEd and Ameren in two different Regional Transmission Organizations (“RTOs”). (*See* CES Ex. 2.0 at lines 86-91.) PJM, the RTO to which ComEd belongs, has had considerable experience in accommodating the New Jersey auctions and also has shown a willingness and ability to accommodate decisions by states to provide for open access at the retail level. The Midwest Independent System Operator (“MISO”), the RTO to which Ameren belongs, however, has not had experience with auctions and has not yet fully accommodated those states, such as Illinois, that have chosen to permit open access at retail.

The CES noted that the Commission should approve an auction timetable that grants the MISO adequate time to reasonably assess and resolve with PJM any issues regarding the auction. According to the CES, a May or July auction date likely would require MISO to address any

issues sooner, rather than later, in 2006. A September auction would allow MISO to delay addressing any auction issues with PJM until well into 2006.

Furthermore, the CES stated that these potential risks are heightened in downstate Illinois where Ameren has recently begun operating under the MISO with no previous auction experience. Consequently, the date of the initial auction should allow sufficient time to make corrections given that it has not been tested in PJM's Northern Illinois Region or in MISO. According to the CES, a May 2006 initial auction date would allow for the auction to be delayed to September if suppliers, customers, RTOs, processes and/or systems are not ready in May or if the Commission or auction manager decides that there are potential problems in the May bidding process that require delay.

As Dr. O'Connor explained, "deadlines work." (CES Ex. 1.0 at line 227.) By setting a May 2006 initial auction date, the Commission would encourage a time frame that will require all parties to define the post-transition rules of the game, thus bringing more certainty to the environment for customer decision-making. (*See id.* at lines 227-31.)

[NOTE: The CES explained in its initial brief that scheduling the initial auction well before September 2006 was preferred, for the reasons cited above. If the Commission revised other portions of Ameren's proposal to mirror those of ComEd (e.g. customer groupings, enrollment window, retail rules), however, the Coalition stated that the Commission's conclusion to conduct the initial auctions in September 2006 may be reasonable. For the Commission's convenience, the CES provided language for each alternative below.]

Commission Analysis and Conclusion – Alternative 1 – July 2006

The Commission agrees with Staff, Ameren, ComEd, and other intervenors about the importance of contemporaneous auctions to procure supply for commodity customers of both ComEd and Ameren. The Commission recognizes that this requires the selection of a common date for the initial auction.

The Commission further agrees with the CES that unnecessary delay in conducting the initial auction would come at the expense of providing customers and policymakers additional flexibility. Holding the initial auction sooner, rather than later, will provide additional time to address problems and make necessary corrections or adjustments following the auction and prior to the new rates taking effect.

Accordingly, the Commission orders Ameren to conduct its initial auctions, in tandem with ComEd's. The Commission is of the opinion that a July 2006 initial auction will provide the Auction Manager with a sufficient amount of time following the Commission's order in this proceeding to complete the tasks that must be completed prior to the auction, such as the testing of and practice with software and supplier training and will also provide other market participants with a greater amount of time to make decisions regarding their Post-2006 supply options.

Commission Analysis and Conclusion – Alternative 2 – September 2006

The Commission agrees with Staff, ComEd, Ameren, and other intervenors about the importance for a joint auction that would procure supply for commodity customers of both ComEd and Ameren. The Commission also agrees that this requires the selection of a common date.

The Commission further agrees that the initial auction's success is critical to the development of the market and that the auction, therefore, should be launched with the least amount of uncertainty. Unknown risks and issues resulting from inexperience could impact the success of the initial auction; therefore, additional time possibly could help to minimize these potential risks. In addition, we recognize the importance of completing the pending delivery services tariffs proceeding prior to the initial auctions so that all market participants have a greater degree of certainty regarding the impending changes in the market.

Accordingly, the Commission orders Ameren to conduct its initial auctions in tandem with ComEd's. The Commission is of the opinion that a September 2006 initial auction will provide the Auction Manager with a sufficient amount of time following the Commission's order in this proceeding to complete the tasks that must be completed prior to the auction, such as the testing of and practice with software and supplier training and will also provide all market participants with a higher degree of certainty regarding all related issues and changes in the marketplace.

G. Common v. Parallel Auction

3. Between Ameren and ComEd Products

Ameren and ComEd originally proposed to conduct their respective auctions separately but in parallel.

Staff's Position

Staff witness Salant urged the Commission to approve auction rules that provide for switching between the fixed price products of Ameren and ComEd. (ICC Staff Ex. 1.0 at lines 770-78). Staff witness Ogur pointed out that even small benefits to switching would still be benefits, and the Company had pointed to no costs to using a common Ameren/ComEd auction.

(ICC Staff Exhibit 4.0 at lines 83-469) Staff witness Ogur also showed “how switching is a viable strategy for a bidder with physical resources in any RTO and how switching can lead to efficiency gains, even during the period when seams between MISO and PJM still exist.” (ICC Staff Exhibit 4.0 at lines 411-15)

Ameren’s Response

Ameren agreed with Staff and proposed in Mr. Nelson’s testimony that the auction provide for switching between Ameren and ComEd fixed price products. Ameren also proposed that switching be permitted between the hourly products of Ameren and the hourly products of Ameren. Ameren averred that switching made sense when the products in the auction are good economic substitutes for one another in the bidders’ business plans. In these cases, according to Ameren, switching between products increases competition and allows prices to reflect the market more accurately. Ameren did not support permit switching between fixed-price products and hourly-price products.

CES Position

The CES did not object to a joint or parallel Ameren auction with ComEd. However, the CES reminded the Commission that the desire for perfect congruence in auction products between ComEd and Ameren should not come at the expense of interfering with the market’s role in allocating migration risk premiums.

The CES contended that, ideally, to facilitate suppliers’ ability to switch between the Ameren and ComEd auctions, symmetry should be attained between characteristics of the customer population to be served under the annual and blended products throughout the state. (See CES Ex. 4.0 at lines 491-95.) With this objective in mind, the CES argued that customers

with a similar likelihood to take service from a RES in the post-transition environment should be grouped together.

Commission Analysis and Conclusion

The Commission agrees with Staff and approves the proposal to combine Ameren products with ComEd products, to the extent described above, in order to conduct two common auctions in parallel with each other: (1) a fixed price product auction consisting of several fixed price products; and (2) an hourly product auction consisting of two hourly products.

H. Blended, Fixed Price Auction Product

Ameren's Position

Ameren proposed to procure a full-requirements annual, single fixed-price product (i.e., prices would be set for the length of the supply period) for residential customers and small business customers with demands under 1 MW via a blended mix of one-year, two-year, and three-year supply periods. (Ameren Ex. 3.0 at lines 63-152.)

CES Position

The CES first noted that ComEd and Ameren originally proposed virtually identical customer groupings and retail rules. (*Compare* Ameren Ex. 3.0 at lines 56-129 *with* ComEd Ex. 3.0 at lines 496-580.). The Coalition then pointed out that, throughout its procurement proceeding in ICC Docket No. 05-0159, ComEd repeatedly revised its proposal to establish a more workable structure, which the Coalition stated it now generally supported. (*See* O'Connor Tr. at 250-52.) However, consistent with its history of anti-competitive practices, Ameren manufactured illegitimate excuses and failed to even consider revisions ComEd made to its proposal. (*See* CES Ex. 1.0 at lines 377-93; Blessing Tr. at 489-90.) To promote the development of the retail electric market throughout Illinois and to further the goal of statewide

uniformity, the Coalition respectfully requested the Commission to order Ameren to revise its customer groupings and related retail rules to better align them with those presently proposed by ComEd in its procurement proceeding.

Specifically, the CES asked the Commission to direct Ameren to include the 400 kW to 1 MW customer group with those customers over 1 MW in the BGS-LFP annual product auction. The CES also asked the Commission to direct Ameren to establish an enrollment window that consists of a minimum of 50 days for the initial auction and 45 days for subsequent auctions. In short, the CES asked the Commission to direct Ameren to revise its customer groupings and enrollment window to comport with those of ComEd.

According to the CES, ComEd appropriately grouped those customers with other eligible customers with demands greater than 1 MW in its annual auction product. (*See* ICC Docket No. 05-0159, ComEd Ex. 18.0 at lines 558-68.) Ameren balked at this combination, and based its customer groupings solely upon the historic switching levels of these customers. (*See* ICC Docket No. 05-0160(c), Ameren Ex. 18 at lines 526-69.)

Because the 400 kW to 1 MW customers in ComEd have demonstrated a propensity to migrate that is more akin to that of the 1-3 MW customers in ComEd, the CES averred that such similarly-situated customers should be grouped together. (*See* CES Ex. 4.0 at lines 535-40.) Likewise, the CES averred, customers with demands greater than 1 MW in the Ameren service territory should be grouped with ComEd customers with similar demand. (*See* CES Ex. 4.0 at lines 654-662.) However, the record evidence, according to the CES, supported the

Commission's use of discretion to either include or exclude the 400 kW to 1 MW customers in the Ameren service territory.

The CES contended that, in the post-mandatory transition period world, given proper auction products and tariff terms and conditions, competition likely will develop in the Ameren service areas to a degree similar to that which already has developed in the ComEd service area. (*See* CES Ex. 4.0 at lines 475-78.) The CES explained that the end of the transition period should be the end of institutional obstacles, intended or inadvertent, that frustrate customer choice in the Ameren service territories. (*See* CES Ex. 4.0 at lines 639-50.) Accordingly, the CES argued that all 400 kW to 1 MW customers in Ameren's service areas should be grouped together. Indeed, according to the CES, it would be improper for the Commission to build incentives into the auction process for Ameren's rates that displaced products easily attainable in the competitive retail market.

The CES submitted data that showed that the 400 kW to 1 MW customers in the Ameren service territories would represent an insignificant amount of load in a combined auction. (*See* CES Ex. 4.0 at lines 563-67.) These customers represented a mere 3% of the total load that would be included in a combined blended product auction if ComEd's 400 kW to 1 MW customers were extracted from the blended product auction and served through a one-year auction product. According to the CES, this relatively insignificant load for Ameren customers between 400 kW and 1 MW should not be determinative of whether to group together all customers with demands greater than 400 kW.

To summarize the CES' position, it stated that the Commission could use its discretion to determine how to treat the 400 kW to 1 MW customer group in the ComEd service territory have demonstrated greater total switching activity than even the 1-3 MW customer group in the Ameren service territories. Given the likelihood that those customers will behave similar to the 400 kW – 1 MW customer group in the ComEd service territory, the ComEd contended that it was entirely appropriate to include those Ameren customers in the annual product auction. However, the CES cautioned, the manner in which those Ameren customers are treated should have no bearing on the way in which the 400 kW – 1 MW ComEd customers are treated.

Commission Analysis and Conclusion

The treatment of customers in the 400 kW – 1 MW customer grouping is discussed further below.

2. Proposed 1-year Fixed Price Product for 400 kW – 1 MW Customers

Ameren's Position

Ameren proposed to group the load of non-residential customers with demands of 400 kW to 1 MW with that of residential and small business customers for procurement purposes. Ameren offered three (3) assertions to justify its customer grouping proposal: (1) that revising the customer groupings to exclude the 400 kW to 1 MW from the blended product would add to the complexity of the auction process; (2) that Ameren lacked the necessary metering to allow for the 400 kW to 1 MW customers to be served under the annual auction product; and (3) that the 400 kW to 1 MW customers historically have not taken service from RESs, and therefore should be grouped with residential and small business customers who likewise have not taken service from RESs.

CES Position

The CES averred that Ameren's proposal, to include the load of customers with demands of 400 kW to 1 MW together with all residential and small business customer load for procurement purposes, was improper because, according to the CES, Ameren's proposal was detrimental to residential and smaller customers and, if approved, would harm the development of the competitive market. (*See* CES Ex. 1.0 at lines 530-31; CES Ex. 4.0 at lines 300-06.) Instead, the CES averred that customers with load demands of 400 kW to 1 MW properly should be included in the customer group with those customers with demands over 1 MW in the BGS-LFP annual product auction. (*See* CES Ex. 4.0 at lines 284-92.)

Consistent with Ameren's stated goal of promoting statewide uniformity in the auction products, the Coalition further revised its proposal to include all commercial and industrial customers with demands greater than 400 kW in the annual auction product. The CES contended that this grouping would better align Ameren's auction products with ComEd's. (*See* O'Connor Tr. at 250-52.) Moreover, the CES contended that its customer grouping proposal, by separating the 400 kW to 1 MW customer group from customers below 400 kW, mitigated any migration risk premium that suppliers might include in the blended product auction price. (*See* CES Ex. 4.0 at lines 347-50.)

The CES stated that, unlike ComEd (which revised its proposal in response to the Coalition's proposal and other feedback), Ameren completely ignored the pro-competitive, pro-consumer aspects of the Coalition's proposal. (*See* CES Ex. 4.0 at lines 66 to 118.) To justify its customer grouping proposal, the CES stated that Ameren offered three (3) misguided assertions: (1) Ameren lacked the necessary metering to allow for the 400 kW to 1 MW customers to be served under the annual auction product; (2) revision of the customer groupings, as proposed by

the CES, added complexity to the auction process; and (3) the 400 kW to 1 MW customers historically have not taken service from RESs. (*See* Ameren Ex. 11 at lines 482-85; 570-73; Ameren Ex. 15.0 at 390-95.) The CES contended that Ameren's assertions, to the extent they are accurate, did not justify Ameren's anticompetitive, anti-consumer proposal. The Coalition then demonstrated how Ameren's assertions were invalid.

First, regarding Ameren's assertion that it lacked the necessary metering, the CES acknowledged that Ameren's deployment of interval metering woefully lagged ComEd's. (*See* CES Ex. 4.0 at lines 313-14.) Specifically, the CES repeated Ameren's statement that roughly 90% of Ameren's customers in the 400 kW to 1 MW group possessed demand, rather than interval, meters. (*See id.* at lines 314-15.) According to the Coalition, the lack of interval meters was merely evidence of Ameren's own anti-competitive actions, and, as such, did not provide a justification to reject the Coalition's proposal to extract the load of the 400 kW to 1 MW customer group from the blended auction. (*See id.* at lines 315-18.)

Moreover, the CES contended and Coalition witness O'Connor explained that Ameren's lack of interval metering for customers in the 400 kW to 1 MW grouping actually justified and supported the Coalition's proposal. (*See id.* at lines 318-19.)

Ameren asserted that the lack of interval meters precluded the Companies from providing load profiles of the 400 kW to 1 MW customers and other data to auction bidders in the annual auction. The CES stated that this lack of information, according to Ameren, would adversely affect prices. (*See* Ameren Ex. 15.0 at lines 379-419.) The CES pointed out Ameren's inconsistent arguments: on the one hand, Ameren argued that lack of information rendered the 400 kW to 1 MW load too pricey to carve out from the blended product, which includes residential and small business customers; on the other hand, Ameren proposed to include the 400

kW to 1 MW load with all residential and small business customers because doing so, somehow, by some unknown way, lowered overall prices for the blended product auction. (*See* Ameren Ex. 15.0 at lines 429-34. *But see* CES Ex. 4.0 at lines 324-27.) In sum, the CES contended that Ameren failed to explain why this lack of information rendered this group of customers too pricey on its own while, at the same time, did not render this group too pricey for aggregation with residential and small business customers. In short, Ameren's assumption that the 400 kW to 1 MW customers are too pricey to isolate into its own group, if true, merely buttressed the CES's proposal to exclude the 400 kW – 1 MW from the BGS-FP auction.

The CES also pointed out that, to the extent necessary data were missing, data could be developed regarding the 400 kW – 1 MW customers. Specifically, the CES explained that Ameren could develop load profile estimates for the 400 kW to 1 MW customer group based on a 10% sample of such customers with interval meters. (*See id.* at lines 335-42.) The CES pointed out that ComEd has relied on similar, sample metering for many years and likely could advise Ameren, especially in the event that the Commission adopted Staff's proposal for a combined Ameren and ComEd auction. (*See id.* at lines 337-39.) Lastly, the CES reckoned that auction participants likely would study and analyze the load profile information provided by ComEd for the 400 kW to 1 MW customers for Ameren's customers. (*See id.* at lines 339-42.)

Second, to counter to Ameren's unsubstantiated concerns about "auction complexity," the Coalition demonstrated how its proposal, which removed non-residential customers with demands between 400 kW and 1 MW from the blended product, actually minimized auction complexity. (*See id.*) According to the CES, Ameren wrongly asserted that the Coalition's original modest and straight-forward proposal to include an auction for the 400 kW to 1 MW customers added complexity to the auction. (*See* Ameren Ex. 11.0 (Revised) at lines 482-88.

But see CES Ex. 4.0 at lines 371-78.) Nevertheless, the CES addressed Ameren’s purported “complexity” assertions by modifying its proposal to include the 400 kW to 1 MW customers with the 1 MW and greater customers in the BGS-LFP product auction. (*See* CES Ex. 4.0 at lines 300-32.) The CES further refined its proposal to mirror the customer groupings proposed and supported in ComEd’s own procurement proceeding. (*See* O’Connor Tr. at 250-52.) The CES averred that its revised proposal effectively mitigated any asserted “complexity” by (1) eliminating any unnecessary and unjustified customer grouping differences between Ameren and ComEd; and (2) largely resolving the debate over whether and how Ameren should include a migration risk premium allocation element in its translation tariff for BGS-FP. (*See id.* at lines 392-417.)

The CES noted that, with respect to the question of complexity, the comments of Staff witness Dr. Salant were pertinent: “At times, getting the best rates for ratepayers can conflict with the goal of maximizing the probability of regulatory approval, especially when obtaining the best rates for ratepayers involves some risks, or involves a procurement process that appears complex.” (ICC Staff Ex. 1.0 at lines 2104-08.) In other words, as explained by Coalition witness Dr. O’Connor, “the Commission should focus not on assertions regarding the complexities associated with competing proposals but, rather, on which structure is most beneficial to customers.” (CES Ex. 4.0 at lines 365-67.)

Third, the CES responded to Ameren’s assertion that the low level of switching activity by the 400 kW to 1 MW customers in the Ameren service territories justified Ameren’s proposal to place these customers in the multi-year product grouping. The CES contended that numerous obstacles to choice in the Ameren service areas during the transition period had rendered Ameren switching data unhelpful for anticipating parallels in post-transition customer behavior between

the Ameren and ComEd service territories. (*See* CES Ex. 1.0 at lines 456-59.) Thus, the CES concluded, the historic switching figures for the Ameren service territories did not indicate the level of switching that could occur in the post-transition period. (*See id.*) The CES cautioned the Commission from allowing Ameren to use its prior failure to facilitate competition as a reason to prevent a pro-competitive restructuring of its customer groupings in the instant consolidated proceedings.

The CES stated that Ameren switching levels will improve with the end of transition charges, Ameren's integration into MISO, and continued improvements in the wholesale market, appropriate decisions by the Commission in the instant proceeding, and continued Commission oversight and intervention as necessary. (*See* Ameren Ex. 2.0 at lines 173-77; Nelson Tr. at lines 135-38; CES Ex. 1.0 at lines 463-67.)

In addition to rebutting Ameren's assertions, the CES explained why the Coalition's proposal would provide more **benefits** to customers by: (1) properly insulating residential and small business customers from migration risk premiums properly attributable to larger customers; (2) allowing market principles to properly set the migration risk premium; and (3) promoting the development of a competitive retail market in the Ameren Service territories.

First, consistent with the Customer Focus principle, as advocated by Dr. O'Connor and Ameren witness Dr. Lacasse, the Coalition's proposal insulated residential and small commercial customers from the migration risk premium associated with the 400 kW – 1 MW customers. (*See* CES Ex. 4.0 at 408-17. *See also* Blessing Tr. at 493-94.) According to the CES, Ameren admitted that Ameren's proposal would create a subsidy, flowing from residential to non-residential customers, in the blended product. The CES stated that Ameren witness Cooper attempted to justify the Ameren proposal by asserting: "Considering the typically better load

patterns of the non-residential group, it is reasonable to expect that the resultant prices for the non-residential group will be lower than if they had been bid separately.” (See Ameren Ex. 15.0 at lines 429-32.) The CES averred that, to the extent that this assertion regarding load profiles was true, and in tandem with Ameren’s claims elsewhere that the Companies did not know these customers’ load profiles, Ameren’s assertion actually supported the CES’ conclusion that residential customers' rates would be lower if fewer non-residential customers were included in the blended product. (See CES Ex. 4.0 at lines 395-406.) Ameren witness Blessing likewise admitted that, following the transition period, the 400 kW – 1MW customer group, rather than the residential customer group, was more likely to migrate to RESs. (See Tr. at 481.) He also admitted that Ameren’s proposal shifted the migration risk premium for the 400 kW to 1 MW customers to residential and small commercial customers for the duration of the blended product’s term. (See Tr. at 483-86.)

Second, in keeping with the Market Reliance policy principle, the Coalition explained that its proposal would allow the market to develop the migration risk premium that should exist for customers with demands greater than 400 kW. (See CES Ex. 4.0 at 410-17.) As Ameren witness Blessing explained, the cost premium associated with the migration risk should follow the customer group that creates that risk. (Tr. at 480.) According to the Coalition, its proposal greatly alleviated migration cross-subsidies because any resulting migration risk premium included in the BGS-FP would be only as a result of any premium the market attributes to customers with demands under 400 kW. As a result, the Coalition averred that its approach comported with the Market Reliance principle advanced by Ameren witness Dr. LaCasse and supported by Coalition witness Dr. O’Connor (see Ameren Ex. 12.0 at lines 370-73; CES Ex. 4.0 at lines 413-17.)

Third, because the Coalition's proposal would better promote the development of competition in the Illinois retail electric market, the Coalition requested the Commission to order Ameren to include the 400 kW to 1 MW customers in the BGS-LFP annual auction. The CES stated that customers with demands between 400 kW and 1 MW possess load characteristics and migration potential more akin to customers with demands greater than 1 MW. (*See id.* at lines 554-57.) In other words, the CES averred that, throughout the state, customers with demands between 400 kW to 1 MW have demonstrated a greater appetite for choice than have customers below that level. (*See CES Ex. 1.0 at lines 359-61.*) The CES also opined that the level of competition for the 400 kW to 1 MW customers would likely increase in the post-transition period, but the prospects for competition for the residential and small commercial customers is less clear. (*See CES Ex. 4.0 at lines 630-35. See also Blessing Tr. at 481.*) The Coalition explained that including the 400 kW to 1 MW customers in the annual auction product would be more conducive to customer switching for this group.

In sum, the Coalition asked the Commission to order Ameren to include the 400 kW – 1 MW customer grouping with the over 1 MW customer grouping for procurement purposes. The Coalition maintained that such a grouping properly assigned costs, minimized the risk of cross-subsidies and promote the development of competition. The Coalition requested the Commission to adopt the Coalition's customer grouping proposal for the Ameren service territories because it offered default products consistent with those offered to similarly-sized customers in ComEd's service territory.

Commission Analysis and Conclusion

The Commission is persuaded by the CES' testimony and supporting data. The Commission finds that it is incumbent upon its body to eliminate institutional obstacles, intended

or inadvertent, that have frustrated customer choice in the Ameren service territories during the mandatory transition period. Ameren's prior failure to facilitate competition requires the Commission to assume a more active role in the development of competition in the Ameren service territories.

The Commission agrees that, contrary to Ameren's assertions, the Coalition's proposal greatly simplifies the auction process. The Commission finds reasonable the Coalition's revised customer groupings that include the 400 kW to 1 MW customers in the annual segment rather than the blended segment. The Commission further agrees that the inclusion of 400 kW to 1 MW customers in the annual segment, rather than the blended segment, provides a logical and reasonable grouping based on statistical switching propensities. The record demonstrates that such a grouping also eliminates the need to utilize a migration risk allocation mechanism in the rate translation mechanism (or rate "prism") for the remainder of the mass market customers in the blended product (i.e., less than 400 kW).

I. Fixed Price Auction Product and Tariffed Services for Larger Customers

1. Nature of Auction Product and Tariffed Services for 1 MW and Over Customers

Ameren's Proposal

Ameren proposed to serve larger customers (those with loads exceeding 1 MW) through BGS-LFP tranches and BGS-LRTP tranches. Ameren stated that BGS-LFP tranches represented fixed-price full-requirements service; BGS-LRTP tranches represented full requirements service with a real-time (hourly) priced full-requirements service.

CES Proposal

As discussed above, the CES proposed to remove the load of customers with demands between 400 kW and 1 MW from Ameren's blended product auction; instead, the CES proposed that these customers should be offered a one-year retail product, based on a single-year wholesale auction similar to that offered to customers with demands greater than 1 MW. The primary justification for this proposal, according to the CES, is that the switching propensity for 400 kW to 1 MW customers was much more similar to customers in the 1 to 3 MW customer group than to customers with demands under 400 kW. (CES Exhibit 1.0 at lines 593-95) Another advantage, the CES explained, was the reduction of any risk premiums that suppliers providing bids for the BGS-FP product might add to their bids. (CES Exhibit 4.0 at lines 307-310). Moreover, consistent with Ameren's stated goal of statewide uniformity in the auction products, the CES recommended that Ameren refine its default products and related retail rules to mirror those presently advocated by ComEd in its own procurement docket. (*See O'Connor Tr. at 250-52.*)

As the CES explained, the default products for these customers will vary based upon whether the customer was served by RES supply (default is RES service), PPO or hourly service (default is hourly service), or bundled service (default is the annual product).

Commission Analysis and Conclusion

As discussed above, the Commission finds reasonable the Coalition's revised customer groupings that include the 400 kW to 1 MW customers in the annual segment rather than the blended segment. The Commission also agrees that, in order to further the goal of uniformity between the Ameren and ComEd products, Ameren should offer default products similar to those

to be utilized by ComEd for customers in its 400 kW to 3 MW customer grouping to the Companies' customers with demands greater than 400 kW.

K. Regulatory Oversight and Review

1. Nature of Commission Review Before, During, and After Auction

(See V(H))

3. Post-Auction Workshop Process

CES' Position

According to the CES, the issue of what products should be offered to which customers should be a topic for thoughtful consideration by the Commission in the annual post-auction collaborative effort, along with other issues. (*See CES Ex. 1.0 at lines 488-94.*) The Commission has been well-served by its ability to respond to various market developments, and it should continue to evaluate the products, customers class demarcations, and other important tariff terms and conditions to look for further opportunities to promote the development of the competitive retail electric market in Illinois.

VII. TARIFF AND RATE DESIGN ISSUES

A. General Tariff and Rate Design Issues

B. Matters Concerning Rider MV

2. Rider MV – Definitions

a. Customer Supply Group Definitions

(See V(H))

4. Rider MV – Retail Customer Switching Rules

a. Enrollment Window

Ameren's Position

Ameren proposed a 30-day open enrollment period for customers interested in the BGS-LFP product to decide whether to take that product. Ameren reiterated that the BGS-LFP product was the one-year fixed price product offered to customers with demands greater than 1 MW.

CES' Position

The Coalition did not object to Ameren's proposal to include an enrollment window for its BGS-LFP product. The Coalition disagreed, however, with Ameren's proposed thirty-day duration of the enrollment window. The Coalition proposed revisions to Ameren's customer groupings, enrollment window and switching rules to make them consistent with those presently advocated by ComEd in its own procurement proceeding. The CES reasoned that, if the Commission were to direct Ameren to revise the Companies' customer groupings to comport with those advocated by ComEd, it likewise would be reasonable for the Commission to direct Ameren to adopt ComEd's proposal to establish a 50-day enrollment window for the initial auction and a 45-day enrollment window for subsequent auctions. However, the Coalition noted that unless and until Ameren adopted more customer-friendly and competition-friendly rules in its service territories, the Commission should direct Ameren to adopt the more well-established 75-day enrollment window, as originally proposed by the CES. According to the CES, the 75-

day enrollment window has proven fair and workable; unless other revisions to Ameren's proposal are adopted, the CES stated that the record did not include any evidence to support a shorter window in Ameren's service territories.

Commission Analysis And Conclusion

The Commission finds that Ameren's proposal to include an enrollment window of some sort related to its BGS-LFP product is reasonable. The Commission recognizes that some parties maintain that enlarging the duration of the window beyond that which Ameren proposed may lead to somewhat higher costs for customers that remain on BGS-LFP service for the entire supply period; on the other hand, other parties maintain that a shorter window could effectively deprive customers of choice because they will not have time to choose. Our discussion and conclusion on the issue of the appropriate duration of the enrollment window will be discussed below.

The Commission acknowledges the Coalition's warnings and agrees that these consolidated proceedings are the appropriate venue to address Ameren's unwillingness to adopt consumer-friendly rules and practices for the post-transition period.

i. Duration of Window

Ameren's Position

As discussed above, Ameren proposed a 30-day enrollment window after the conclusion of the auction for BGS-LFP eligible customers to determine whether to take BGS-LFP service for the length of the supply period (initially January 2007 to May 2008).

CES Position

The CES argued that Ameren's proposed 30-day enrollment period for PPO and delivery service customers to opt in to bundled service supplied through the BGS-LFP auction was too

short and should be extended to 75 days to provide more time for customers to make decisions about their supply alternatives. In addition, the Coalition proposed revisions to Ameren's customer groupings to render them consistent with those adopted by ComEd in its own procurement proceeding. The CES reasoned that, if the Commission were to direct Ameren to thusly revise these customer groupings, it likewise would be reasonable for the Commission to direct Ameren to establish a 50-day enrollment window for the initial auction and a 45-day enrollment window for subsequent auctions. However, unless and until Ameren adopted more customer-friendly and competition-friendly rules for customers in its service territories, the Coalition asked the Commission to direct Ameren to employ the more well-established 75-day enrollment window. According to the CES, the 75-day enrollment window has proven fair and workable; unless other revisions to Ameren's proposal are made, the CES stated that the record did not include any evidence to support a shorter window in Ameren's service territories.

CCG and Dynegy's Position

Although the CCG and Dynegy both separately commented on this issue, their comments were similar. The CCG, while not indicating a preference for the length of an enrollment window, stated that even an enrollment period of 30 days would result in higher CGG generation charges as a premium to its bids. (CCG Exhibit 1.0 at lines 82-82).

Ameren's Response to CES' Proposal

Ameren opposed any increase of the enrollment period. As justification, Ameren averred that increasing the enrollment window beyond 30 days would unnecessarily increase the price for the BGS-LFP product. Ameren's witness Blessing explained that increasing the window requires the BGS-LFP suppliers to hold their price open for an additional 45 days. This would, according to Ameren, increase the resulting auction price for the BGS-LFP product. Ameren

averred that the 30-day open enrollment period was a compromise between giving customers enough time to weigh their options and minimizing the risk premium associated with requiring the winning BGS-LFP suppliers to leave that price open during the 30-day period. (*See Ameren Ex. 11, 631-39.*)

Commission Analysis And Conclusion

The Commission is reminded of the CES' contention that the instant proceeding's proper focus is customers. The length of the enrollment period is a matter of judgment on which reasonable people can have different views. The Commission agrees with the CES' observation that the Commission's decision regarding the duration of the enrollment window will have a direct, immediate, and significant impact upon the development of the Illinois retail electric market. The challenge before the Commission is to strike the right balance between providing customers time within which to make decisions, and avoiding any inadvertent, theoretical high premium that would result if suppliers were forced to hold positions open for long periods of time. The Commission notes that the existence of a premium associated with providing customers with more time in which to analyze supply options has not been established in the record of the instant consolidated dockets. Indeed, certain intervenors in the instant consolidated proceedings challenged the basis for this alleged premium. At best, then, and without any empirical evidence to support the claim, any alleged additional premium associated with a larger enrollment window is merely theoretical.

Thus, on the one hand, if the enrollment window is longer than the bare minimum amount of time customers require to decide their supply options, the Commission reckons that a slight theoretical premium may be included in bidding models that the wholesale bidders employ prior to entering the auction. The Commission notes, again, that prices that customers pay may

not include this theoretical premium. On the other hand, if the enrollment window is too short, the Commission reckons that many customers simply will accept the utility supply option, not because it is the most economical option, but rather because customers simply lack sufficient time within the confines of the enrollment window to implement and complete the decision-making steps necessary to evaluate the available alternatives.

As discussed elsewhere, the CES and ComEd, after discussing this issue at length in an effort to reach a compromise solution, agreed that a 50-day enrollment window in the first auction year, when customers are becoming accustomed to the new procurement environment, is appropriate, and that, for all subsequent years, a 45-day window is adequate. The Commission agrees that this compromise, struck in ComEd's procurement proceeding, properly places customers' needs at the center of this issue. While the Commission is concerned with actions that inadvertently increase costs for customers, the instant consolidated record is replete with unsubstantiated concerns about the adverse effects of a longer enrollment window to prices. The Commission agrees with the CES that the competitive market will resolve any legitimate problems (that might arise from higher premiums associated with a longer enrollment window) by offering alternatives to customers in the above 400 kW customer class at a cost lower than the auction price. The Commission is also convinced that competitive activity among RESs also will provide customers with alternatives from any premium unacceptable to customers. As such, customers may find reprieve from prices inadvertently driven higher from a theoretical premium associated with a longer enrollment window; customers have no such reprieve from an enrollment window that is simply too short for customers to evaluate their available supply alternatives. Given the lack of empirical evidence to support the basis for this theoretical premium, the Commission concludes that customers would be better served by paying this

theoretical premium and having more time to make supply decisions. The Commission therefore approves a 50-day enrollment window for Ameren's initial auction and 45-day enrollment window for all subsequent auctions.

6. Rider MV – Translation to Retail Charges

a. Customer Supply Group Migration Risk Factor

Ameren's Proposal

Ameren proposed to “translate” the wholesale prices resulting from the auction into retail rates that it will charge customers. (*See* Ameren Ex. 5.0 at lines 389-652.) The goal of the translation mechanism, according to Ameren, was to properly allocate costs (higher prices) to those customers who caused those costs (that is, those who are responsible for the price being higher). Ameren stated that one of the relevant costs to be assigned is the cost associated with the possibility that customers may migrate away from the utility supply and to the competitive market. (*See* Ameren Ex. 3.0 at lines 72-78; Blessing Tr. at 482-83.) Accordingly, Ameren's proposed translation mechanism or “Prism” included an adjustment to reflect the migration risk within each customer group. (*See* Ameren Ex. 5.0 at lines 655-71.) The translation methodology proposed by Ameren contemplated relative costs associated with electric energy, generation capacity, and ancillary services. Ameren averred that the purpose of the translation tariff was to take the wholesale prices from the auctions and, by making certain assumptions, translate the wholesale auction prices into the various retail rates that it will charge its bundled service customers.

Coalition's Proposal

The CES expressed concern regarding Ameren's proposed translation mechanism as it failed to appropriately include an adjustment to reflect the migration risk within each customer

group. (See Ameren Ex. 5.0 at lines 655-71; CES ex. 3.0 at lines 93-96.) The CES stated that Ameren's proposed translation methodology contemplated relative costs associated with electric energy, generation capacity, and ancillary services. However, unlike the translation tariff proposed by ComEd in its procurement proceeding, the CES contended that Ameren's proposal failed to allocate the migration risk premium in order to recognize differing migration potential across customer classes. (See CES Ex. 3.0 at lines 93-96.) Taking this step is especially imperative, according to the CES, if the Commission allows Ameren to keep customers between 400 kW and 1 MW in the BGS-FP blended product group. The Coalition recommended that the Commission direct Ameren to revise the Companies' proposed Prism to allocate the migration risk premium in a way that properly recognized these distinctions among customer classes. (See CES Ex. 3.0 at lines 88-101.) According to the CES, Ameren failed to articulate a persuasive reason for failing to make this distinction.

Commission Analysis And Conclusion

As discussed above, the Commission agrees that the Coalition's customer grouping proposal should be adopted here, in these consolidated proceedings. The Commission agrees that the Coalition's modified customer groupings largely resolve the problem of error inherent in the development and application of any migration risk premium allocation. Once the 400 kW to 1 MW customer group is removed from the BGS-FP product and included with the BGS-LFP product, any migration risk premium that suppliers might include in the blended product auction price would certainly be smaller and easier to handle, and any error in managing that allocation would have fewer consequences.

Moreover, the Commission agrees that, by expanding the BGS-LFP product to include the 400 kW to 1 MW customers, whatever migration risk premium suppliers priced into their

bids would be related to and allocated among customers within that group. This would obviate any need to use the Prism to allocate any premium as it might be related to this customer group. The Commission also finds that the allocation method in the Prism should not rely upon historical switching levels, but rather than upon market expectations of prospective switching by customers under 400 kW. The Commission favors the CES's proposal, as the inclusion of the 400 kW to 1 MW customers into the BGS-LFP product group, will isolate any migration risk premium to that group in the auction itself. The Commission notes that this approach is consistent with the Market Reliance principle advanced by Ameren witness Dr. LaCasse.

Accordingly, the Commission directs Ameren to revise its tariffs to comport with the Commission's ruling.

7. Rider MV – Supply Procurement Adjustment

Ameren's Proposal

Ameren's proposal includes the Supply Procurement Adjustment ("SPA") which the Companies defined as "any additional costs incurred by the Company or allocated to the procurement function related to the provisions of supply and energy." (Ameren Proposed Schedule for Electric Rates at Sheet No. 27.048). Ameren stated that the goal of the SPA was "to design class rates that reflect cost causation and equitable cost recovery principles, with appropriate consideration of equity and fairness to all customer classes." (Ameren Ex. 5.0 at lines 87-89.) Ameren averred that attainment of that goal will benefit retail customers and will contribute to the overall fairness of rates. Within the SPA, Ameren included cost categories such as, "professional fees, costs of engineering, supervision, insurance, payments for injury and damage awards, taxes, licenses, and any other administrative and general expense not already

included in the auction prices for power and energy service, not recovered from the supplier fee.” (Ameren Proposed Schedule for Electric Rates at Sheet No. 27.048.)

CES’ Position

The CES argued that Ameren’s Supply Procurement Adjustment (“SPA”) should be improved in three substantive ways. First, while the CES generally supported Ameren’s proposed allocation method in terms of allocating the SPA on a ¢/kWh basis, the CES contended that Ameren failed to provide enough detail to determine how this allocation would be distributed among the various customer classes (See CES Ex. 3.0 at lines 265-72). Second, the CES noted that although Ameren included examples of a number of cost categories, the CES averred that the SPA should be revised to ensure proper recognition and assignment of costs (capital/non-capital, direct/indirect, labor/administrative overhead) that are attributable to the Companies’ new procurement model and are intended to be recovered through the SPA. (See CES Ex. 6.0 at lines 311-18). Lastly, the SPA should be tracked, according to the CES, in the Market Value Adjustment Factor (“MVAF”). (See CES Ex. 6.0 at lines 313-14.)

According to the Coalition, Ameren failed to specify what costs are to be included in the SPA; moreover, the Coalition contended that Ameren failed to propose a reasonable allocation methodology for these costs. Instead, according to the Coalition, Ameren stated that the SPA will include general cost categories such as, “professional fees, costs of engineering, supervision, insurance, payments for injury and damage awards, taxes, licenses, and any other administrative and general expense not already included in the auction prices for power and energy service, not recovered from the supplier fee.” (Ameren Proposed Schedule for Electric Rates at Sheet No. 27.048.) (See CES Ex. 3.0 at lines 292-96.)

The CES averred that the assignment of costs to “cost-causers” benefits retail customers and contributes to the overall fairness of rates. (*See* CES Ex. 3.0 at lines 275-79.) The Coalition further contended that this approach, under which “cost-causers” pay their appropriate costs, is consistent with the structure outlined in the Act. (*See* 220 ILCS 5/16-110(c)(ii) (prescribing that an electric utility is permitted to collect “a fee to compensate the electric utility for the service of arranging the supply or purchase of such electric power and energy”); *see also* 220 ILCS 5/16-112(k) (providing that costs shall be applied taking into account “the daily, monthly, annual and other relevant characteristics of the customers’ demands on the electric utilities’ system.”).) As such, the Coalition asked the Commission to direct Ameren to equitably allocate the SPA costs so that these costs are assigned to the cost-causers.

The Coalition explained that all direct and indirect costs associated with the service of arranging for the supply of electric energy supplied by the utility should be allocated taking into consideration the relevant characteristics of the customers’ demands on the electric utility’s system. (*See* CES Ex. 3.0 at lines 285-88.) It followed, according to the Coalition, that all costs Ameren incurred as a result of procuring its power through the proposed auction process should be included in the SPA.

Specifically, the Coalition asserted that the Commission should assure that generation supply costs are not allocated to delivery services for collection. The CES’ concern was that an improper allocation of costs will distort the true generation supply costs, distort the market, create false price signals, and act to frustrate customer choice and competition. (*See* CES Ex. 3.0 at lines 302-05.) The CES presented evidence that Ameren will incur a variety of direct costs as a consequence of the auction methodology, including costs related to:

- Conducting the auction process itself;

- Expenses of various employees' time in reviewing the results of the auction;
- Communicating the auction results to the Commission and other parties;
- Incorporating the results into the billing system; and
- Other similar auction-related direct expenses.

(See CES Ex. 3.0 at lines 307-11.)

The CES averred that Ameren will incur a variety of indirect costs as a consequence of the auction methodology. According to the CES, these costs arise out of a variety of responsibilities related to Ameren's ongoing role as a provider of electric energy at retail, even though it would be acquiring the related wholesale energy through the auction. (See CES Ex. 3.0 at lines 314-16.) The CES averred that Ameren will incur indirect costs related to:

- Processing and tracking customer accounts that leave for RES service or opt in to BGS-LFP;
- Communicating changing load characteristics to the winning suppliers as customers migrate;
- Paying the suppliers each month;
- Calculating the MVAF on an ongoing basis;
- Communicating to large accounts and smaller accounts through in-person and call center communications respectively;
- Utilizing and/or upgrading billing and communications systems; and
- Producing marketing or communication pieces for distribution to customers regarding new supply options and applicable auction and product rules.

(See CES Ex. 3.0 at lines 316-36.) These costs, according to the CES, should be allocated to the energy component of customers' bills. (See CES Ex. 3.0 at lines 338-50.)

The Coalition explained that the precedent for identifying and allocating marketing expenses related to energy supply is well-established. (*See* Ill. Commerce Comm’n, *Central Illinois Public Service Company/Union Electric Company, Petition For Approval of Tariff Sheets Implementing Revised Market Values Index Methodology*, Docket Nos. 02-0656, 02-0671, 02-0672, 02-0 consol., Final Order (March 28, 2003.)) Similarly, the Coalition asserted that such expenses should be allocated as supply administrative overhead, in addition to the specific employee time and capital expenses, and should be correlated to the relevant indirect supply-related activities and thusly tracked.

The Coalition argued that the SPA should be tracked in the MVAF to ensure that Ameren neither over- nor under-collects these expenses. (*See* CES Ex. 3.0 at lines 397-99.) According to the Coalition, the per-kWh allocation approach properly accounted for the fact that the average non-residential customer account used more kWh than the average residential account, and that more of Ameren’s own internal resources and indirect supply administration costs under the proposed auction methodology will be directed toward the non-residential classes in administering the tariffs. (*See* CES Ex. 3.0 at lines 401-06.) The Coalition averred that this allocation method produced a more accurate allocation of these costs consistent with the requirements of the Act and was consistent with the method Ameren has already proposed for the application of the MVAF. (*See* Ameren Rider MV at Sheet No. 27.054.)

Although the Coalition conceded that the Commission should set the actual charge and the actual allocation in Ameren’s yet-to-be-filed rate case, the CES argued that the Commission also should ensure that a “placeholder” is properly designed within the instant proceeding. According to the Coalition, Ameren failed to appropriately describe the parameters of such a placeholder and the Commission should address the types of costs that should be included in the

SPA. The CES further stated that the Commission should also address the proper allocation method and the manner in which the SPA is to be set. (*See* CES Ex. 6.0 at lines 456-58.)

Since the Commission already is addressing the mechanics associated with Ameren's proposed retail tariffs in this proceeding, the Coalition contended that Ameren did not provide any rationale for delaying consideration of the mechanics of the SPA. According to the Coalition, if the Commission does not address the SPA collection and allocation methodology in this proceeding, Ameren may have to make further revise tariff language (assuming it altered how the "placeholder" is currently drafted) sometime in 2006. (*See* CES Ex. 6.0 at lines 346-48.) The Coalition's concern, then, was that such future revisions would make it more difficult for RESs to educate customers on how the auction works, resulting in additional market uncertainty at a time when customers are supposed to be formulating their energy purchasing strategies. (*See* CES Ex. 6.0 at lines 348-51.)

Commission Analysis and Conclusion

Ameren stated that the actual value of the SPA will be set in a future rate case and, like ComEd, the Companies in the instant consolidated proceedings are only seeking the Commission's approval of the placeholder language regarding the SPA. The CES concurred that Ameren's yet-to-be-filed rate case is the appropriate forum in which to review and assign the costs of both the delivery and procurement segments. The CES contended, however, that the instant consolidated proceedings were the appropriate venue in which to describe the appropriate parameters of this "placeholder." The Commission agrees. While certainly it is appropriate to set the actual rates within the context of a complete rate case, the Commission believes that a modicum of direction, with respect to the Companies' proposed SPA, is warranted here.

While the Commission acknowledges and agrees that the actual charge and the actual allocation of the SPA should be set in the Companies' yet-to-be-filed post-2006 rate case, it is incumbent upon the Commission to ensure that the "placeholder" is properly designed within the instant consolidated proceedings. The Commission finds it proper to address the types of costs that should be included, the proper allocation method, and the manner in which the SPA is to be set in the instant proceeding. After all, as the CES pointed out, the Commission already is addressing the mechanics associated with Ameren's proposed retail tariffs. Ameren has not provided any rationale for delaying consideration of the mechanics of the SPA, and the Commission finds no creditable reason to do so in the record.

Accordingly, the Commission directs Ameren to ensure that all direct and indirect costs associated with the service of arranging for the supply of electric energy supplied by the utility be allocated taking into consideration the relevant characteristics of the customers' demands on the electric utility's system. Specifically, the Commission directs Ameren to assure that generation supply costs, both direct and indirect, are not allocated to delivery services for collection. The Commission agrees that an improper allocation of costs will distort the true generation supply costs, distort the market, create false price signals, and act to frustrate customer choice and competition. In addition, the Commission agrees that the SPA should be allocated evenly per kWh, rather than by a fixed-dollar amount per account, per month, and should be tracked in the MVAf to ensure that Ameren neither over- nor under-collects for this expense.

Ameren is directed to ensure that the SPA, as proposed in any future rate case, is consistent with the parameters outlined herein.

8. Rider MV – Market Value Adjustment Factor

(See VII(B)(7).)

9. Rider MV – Subsequent Review / Contingencies

(See V(K)(3).)

C. Additional Tariff and Rate Design Issues

3. Rider D – Default Supply Service Availability Charge

Ameren’s Position

Ameren requested Commission permission to impose a charge upon RES customers, referred to as the Default Supply Service Availability Charge (“DSSAC” or “Rider D”), that compensated Ameren for purported costs associated with the fact that Ameren must stand ready to serve such customers in the future. Ameren’s proposed DSSAC would entitle Ameren to assess a 15 cent-per-megawatt-hour (15¢/MWh) “non-bypassable” charge on all customers over 1 MW that select electric supply from someone other than Ameren. According to Ameren, “In essence, Rider D represents a capacity option premium, giving customers the right to take BGS-LRTP as default service.” *(See Ameren response to EPS Data Request 2.01, attached to CES Ex. 1.0 as CES Ex. 1.7.)*

Coalition’s Position

According to the Coalition, the DSSAC as designed, constituted a form of “exit fee” or “post-transition customer transition charge” for a service that RES customers do not utilize and that is anti-competitive and would deter customers from switching to RESs. *(See CES Ex. 3.0 at lines 242-45.)* The Coalition recommended that the Commission reject Ameren’s proposed DSSAC since Ameren failed to justify this charge and admitted that the Companies had no cost-

based justification for it. According to the Coalition, Ameren admitted that it has no study or analyses to support its “hard coded” anticipated charge. (*See* Ameren’s response to IIEC Data Request 3-6 attached to CES Ex. 1.0 at CES Ex. 1.8.) Moreover, the Coalition argued that, even if Ameren were to identify specific costs associated with reserve capacity for hourly customers, those costs should be recovered solely and fully from customers who take service under Ameren’s BGS-LRTP. (*See* CES Ex. 6.0 at 212-14.)

The Coalition also quarreled with Ameren’s characterization of the DSSAC as “insurance.” Coalition witness Dr. O’Connor, who once served as Illinois Director of Insurance, explained that this characterization or analogy was much misplaced: “Simply put, Rider-D is not an insurance policy, is not like an insurance policy, and the related charges are neither insurance premiums nor are they like insurance premiums.” (CES Ex. 4.0 at lines 783-85.) Dr. O’Connor further noted that, if Ameren persisted in its contention that the Rider-D charge was, in fact, insurance, then wholesale suppliers would need to be licensed as insurers in Illinois or find themselves in violation of 215 ILCS 5/121. (*See* CES Ex. 4.0 at lines 779-81.)

The Coalition noted that, as a point of reference, ComEd did not currently collect such a fee, even though it offered hourly pricing as a default service to customers with demands over 3 MW whose Rate 6L service has been declared competitive. (*See* CES Ex. 3.0 at lines 249-51.) In addition, the Coalition argued that ComEd did not propose to impose such a fee in the post-transition period on customers who would default to its hourly product. (*See id.* at 251-52.) Therefore, according to the Coalition, the imposition of the DSSAC would only serve to further frustrate development of competition in the Ameren service areas. (*See id.* at lines 255-57.)

Commission Analysis and Conclusion

The Commission agrees that, at this time, Ameren failed to justify the imposition of the DSSAC. In particular, the Commission is unpersuaded by Ameren’s claims that the DSAAC is “insurance.” Just because Ameren labels the DSSAC as “insurance,” does not, in fact, make it so. The Commission is deeply concerned about the imposition of any type of “exit fee” or, more troubling, a “post-transition customer transition charge.” As such, the Commission agrees that Ameren failed to justify the existence of this charge. Accordingly, the Commission rejects Ameren’s DSSAC and orders the Companies to revise tariff sheets to omit any imposition of the DSSAC.

5. Inclusion of Non-residential Rate Risk or Migration Premium as a Factor in Rate Prism for Larger BGS-FP Customers

(See VII(B)(6).)

6. Treatment of Uncollectibles

Coalition’s Position

The Coalition asked the Commission to order Ameren to account separately for uncollectible expenses between “delivery services” related uncollectible expenses and “energy” related uncollectible expenses, and to charge to customers accordingly. According to the Coalition, Ameren properly identified “uncollectibles” as a supply-related cost component and discusses its ability to collect it. (See Ameren Ex. 16.0 at lines 93-112. See also Ameren Proposed Schedule for Electric Rates at Sheet No. 27.049; Ameren Rider MV at Sheet No. 27.054.)

Ameren's Position

Ameren agreed to adopt the Coalition's recommendation to separate uncollectible expenses between delivery and energy supply customers. Ameren further indicated that it would propose establishing a "factor" based on the relative relationship of total uncollectible expenses to total bundled revenue amounts. According to Ameren, this factor would then be applied to the BGS adjusted price. (*See* Ameren Ex. 16.0 at lines 93-112). Ameren stated that, pending final Commission approval, Ameren would incorporate this proposal into the Companies' rates in its upcoming general rate proceedings.

Commission Analysis and Conclusion

The Commission notes that all customers, regardless of their respective energy suppliers, are delivery services customers of the utility. That is to say, customers who remain or elect Ameren service are both energy commodity and delivery service customers of Ameren; customers who opt for third-party supply with a RES are not Ameren's energy commodity customers but are Ameren's delivery service customers. The Companies and the Coalition have reached a compromise on this matter. The Commission agrees with this compromise. Accordingly, the Commission orders Ameren to assign the delivery-related uncollectible expenses as delivery service charges that are allocated, and therefore paid by, all delivery-service customers. Thus, Ameren should allocate energy-related uncollectible to those customers who choose or remain with Ameren as their energy supplier in the manner described above. Lastly, the Commission requests that Ameren track these supply-related uncollectible expenses to ensure that the Company neither over-collects nor under-collects these costs.

7. Credit Risk And Other Administrative Costs

Ameren's Position

Under Ameren's proposal, an RTP energy product would be made available for all customers in the Ameren service territories. The Rider RTP-L product would serve customers with individual demands equal to or greater than 1 MW and Ameren's proposed Rider RTP would serve customers with individual demands less than 1 MW.

Coalition's Position

The Coalition argued that the Commission should order Ameren to implement a revised methodology for allocating expenses incurred as a result of Ameren providing service under its "real-time pricing" or "RTP" hourly energy products. As rationale, the CES contended that Ameren's proposed rate structure failed to fully allocate credit risk and administrative costs to customers taking service under Ameren's proposed Rider BGS-RTP products. (*See* CES Ex. 1.0 at lines 175-82; CES Ex. 3.0 at 448-77.) CES further noted that Ameren did not propose a methodology to account for or properly allocate all of the additional costs that generally are not incurred with the fixed-price full requirements products. According to CES, there are additional costs associated with BGS-RTP that are driven by the fact that the electric energy price varies on an hourly basis.

The Coalition contended that they presented un rebutted evidence that serving customers under Ameren's proposed BGS-RTP products would create additional costs that are generally not incurred with the fixed-price full requirements BGS-LFP, BGS-FP products. (*See* CES Ex. 3.0 at lines 448-77.) The Coalition asserted that the testimony of Coalition witnesses Domagalski and Spilky explained the additional costs associated with charging customers a rate

that changes on an hourly basis, as compared to a rate that is reset annually, due to (1) increased credit risk and credit exposure; and (2) increased administrative costs. (*See id.*)

According to the Coalition, customers taking service under the BGS-RTP auction products will be exposed to potentially wide variability in hourly prices. (*See* CES Ex. 3.0 at lines 453-57.) Although there has only been limited experience with MISO to date, over the last year, the PJM Real Time Locational Marginal Pricing in the ComEd zone had over 100 hours with prices over \$100/MWh. (*See id.*) The Coalition asserted that this uncertainty in the prices to be charged to these customers increased the risk that Ameren will have uncollectibles for customers taking service under this rate that well exceed levels incurred by Ameren in providing service under its annual and multi-year blended rates. (*See id.* at lines 457-60.)

In addition, the Coalition explained that Ameren's uncollectibles risk associated with providing service under an hourly rate will be much greater under Ameren's proposed post-transition rate structure. (*See id.* at lines 453-65.) Coalition witnesses Domagalski and Spilky explained that, thus far, most customers relying on hourly priced products have done so on the basis of specific business programs for better adapting energy supply and costs to business operations and objectives. (*See id.* at lines 460-62.) However, under Ameren's proposed post-transition rate structure, the Coalition witnesses asserted that the hourly product would be the default product for certain classes of customers, resulting in customers taking service under the BGS-RTP products who might not do so as a result of analysis and specific election. Thus, according to the Coalition, providing service to these customers naturally will involve a greater risk of uncollectible expenses. (*See id.* at line 465.) The CES averred that Ameren failed to provide an estimate of this additional cost component; Ameren also failed, according to the CES,

to propose an allocation or recovery methodology that would provide a high level of confidence that such costs would be recovered from the cost-causers rather than from others.

According to the Coalition, serving hourly customers likely will cost more than serving customers receiving the fixed rate products for three reasons: (1) hourly products require more intervention which in turn increases costs to serve (e.g., acquiring, scrubbing, and inputting hourly data will take additional time to process); (2) hourly customers likely would have more questions about their bills, especially when prices are high; and (3) there is a much higher probability that BGS-RTP customer bills would be delayed due to a lack of data, resulting in increased working capital expenses. (*See* CES Ex. 3.0 at 469-76.) According to the Coalition, the direct and indirect costs and related capital expenditures should be considered in calculating the total cost associated with serving hourly customers.

For consistency and for equity purposes, the Coalition contended that these costs should be allocated evenly per kWh to all customers receiving the hourly product. The CES further contended that these costs should be fully accounted for and allocated on a simple \$/kWh basis as part of the energy charges to customers taking service under Rider RTP products; Lastly, the CES averred that these costs should be updated annually to reflect changes in the cost structure. (*See* CES Ex. 3.0 at lines 481-86, 575-76.)

Commission Analysis and Conclusion

The CES presented unrebutted evidence that serving customers under Ameren's proposed hourly product will create additional costs that are generally not incurred with the fixed-price full requirements of BGS-LFP and BGS-FP products. Therefore, it appears that the hourly energy product, as currently proposed by Ameren, would not fully recover the costs associated with providing that service to customers. Ameren did not provide an estimate of this additional cost

component or an allocation or recovery methodology that would provide a high level of confidence that such costs would be recovered from the cost-causers rather than from others.

The Commission directs Ameren to utilize an allocation methodology associated with increased rate of uncollectible expenses resulting from customers being exposed to wide variability in hourly prices; and directs Ameren to establish a methodology for identifying the incremental costs associated with serving hourly customers above and beyond that contemplated for those receiving the BGS-LFP and BGS-FP auction products as discussed herein. As with the SPA, these costs should be fully accounted for and allocated on a simple \$/kWh basis as part of the energy charges to customers taking service under Rider-RTP products. These costs should be updated annually to reflect changes in the cost structure.

8. Integrated Distribution Company Issues

Ameren's Position

AmerenCILCO, AmerenCIPS, and AmerenIP each has been approved to operate as an Integrated Distribution Company (“IDC”). (See ICC Docket Nos. 02-0392, 04-0242, 04-0630.) The Illinois Administrative Code states that, while operating as an IDC, a utility “shall not promote, advertise or market with regard to [the] offering or provision of any retail electric supply service.” (83 Ill. Admin Code 452.240(a).) Ameren did not provide any specific proposal as to how the Companies will balance “good customer communications” with what may be construed as “marketing” of new supply options.

Coalition's Position

To assist in providing objective educational materials to the public that are consistent with the Commission’s “Integrated Distribution Company” rules, the Coalition asked the

Commission to direct Ameren to initiate a separate docketed proceeding for consideration of new procurement process communication materials. (*See* CES Ex. 3.0 at lines 410-23.) The CES cautioned that the Commission should be concerned about how Ameren may balance “good customer communications” with what may be construed as “marketing” of its new supply options.

The CES stated that Ameren and other interested parties should have an opportunity to derive an appropriate balance between getting the word out to customers about the supply choices available from Ameren while ensuring there is no bias that would direct customers toward necessarily taking those supply options offered by the utility. (*See* CES Ex. 3.0 at lines 417-20.) As a result, the CES recommended that the Commission direct Ameren to initiate a separate docketed proceeding in which such communication and marketing materials would be reviewed, commented upon, and approved by the Commission.

Commission Analysis and Conclusion

The Ameren Companies were each separately approved to operate as Integrated Distribution Companies (“IDC”). (*See generally* Commission Docket Nos. 02-0392, 04-0242, 04-0630.) As Ameren recognized, the Companies cannot act, as IDCs, to obtain or retain customers on its supply tariffs. The Commission is concerned about the manner in which Ameren may go about balancing “good customer communications” with what may be construed as “marketing” of its new supply options. Accordingly, the Commission directs Ameren to file a Petition within thirty (30) days of the entry of this Order to initiate a collaborative proceeding to address the post-transition customer education materials and related accounting issues.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) AmerenCILCO, AmerenCIPS, and AmerenIP (“Ameren” or “the Companies”) are Illinois corporations engaged in the distribution and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law; the Appendix attached hereto provides supporting calculations;
- (4) AmerenCILCO, AmerenCIPS, and AmerenIP’s proposed BGS tariffs, with the modifications proposed by the Coalition of Energy Suppliers, shall be adopted;
- (5) The Coalition’s recategorization of AmerenCILCO, AmerenCIPS, and AmerenIP’s auction products so that customers between 400 kW and 1 MW of demand are included together with business customers above 1 MW in demand in the blended, multi-year auction product group, rendering the Companies’ customers groupings more consistent with ComEd’s customer groupings shall be adopted;
- (6) A migration risk premium allocation factor should be adopted, as should the Coalition’s proposal to apply the single year auction product to all Ameren customers with demands greater than 400 kW;
- (7) An appropriate date for the initial auction to take place (which, given AmerenCILCO, AmerenCIPS, and AmerenIP’s other revisions, may be September 2006, but the record evidence also would support Staff’s recommendation for a July 2006 auction, or the Coalition’s original May 2006 date recommendation);
- (8) AmerenCILCO, AmerenCIPS, and AmerenIP should revise its proposed 30-day enrollment window and adopt a 75-day enrollment window, or alternatively, revise the Companies’ customer groupings and provide a 50-day enrollment period in the initial auction and 45-day enrollment periods thereafter, thereby mirroring the proposal advocated by ComEd in ICC Docket No. 05-0159;
- (9) AmerenCILCO, AmerenCIPS, and AmerenIP’s Rider-D is rejected;
- (10) AmerenCILCO, AmerenCIPS, and AmerenIP are directed to use a per kWh volumetric charge for the Companies’ Supply Procurement Adjustment;

- (11) AmerenCILCO, AmerenCIPS, and AmerenIP are directed to separately account for the uncollectible amounts related to delivery services customers and bundled services customers by class; and
- (12) AmerenCILCO, AmerenCIPS, and AmerenIP are directed to revise the proposed BGS-RTP products to address the increased uncollectible expenses rate resulting from real-time customers being exposed to wide variability in hourly prices.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the tariff sheets presently in effect rendered by AmerenCILCO, AmerenCIPS, and AmerenIP are hereby permanently canceled and annulled, effective at such time as the new tariff sheets approved herein become effective by virtue of this Order.

IT IS FURTHER ORDERED that the proposed tariffs, filed by AmerenCILCO, AmerenCIPS, and AmerenIP on or about February 28, 2005, are permanently canceled and annulled.

IT IS FURTHER ORDERED that AmerenCILCO, AmerenCIPS, and AmerenIP are authorized to file new tariff sheets in accordance with Findings (5), (6), (7), (8), (9), (10), (11), (12) and (13) of this Order, applicable to service furnished on and after the effective date of said tariff sheets.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Respectfully submitted,

**CONSTELLATION NEWENERGY, INC.
DIRECT ENERGY SERVICES, LLC
MIDAMERICAN ENERGY COMPANY
PEOPLES ENERGY SERVICES CORPORATION
U.S. ENERGY SAVINGS CORP.**

By: /s/Christopher J. Townsend
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